

RICOH COMPANY, LTD

Plaintiff,

VS.

AEROFLEX INCORPORATED, AMI
SEMICONDUCTOR, INC., MATROX
ELECTRONIC SYSTEMS, LTD.,
MATROX GRAPHICS, INC., MATROX
INTERNATIONAL CORP., and MATROX
TECH, INC.,

Defendants.

) Case No. CV 03-4669 MJJ (EMC)

**DECLARATION OF ERIK MOLLER IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO MOTION FOR LEAVE
TO FILE AMENDED COMPLAINT**

Date: **March 16, 2004**

Time: 9:30 a.m.

Courtroom: 11

I, Erik K. Moller, hereby declare as follows:

1. I am an attorney at law licensed to practice in the State of California and an associate of the law firm of Howrey Simon Arnold & White, LLP, attorneys for defendants Aeroflex, Inc., AMI Semiconductor, Inc., Matrox Electronic Systems, Ltd., Matrox Graphics Inc., Matrox International Corp., and Matrox Tech, Inc. The matters set forth in this declaration are based upon my personal knowledge, except where otherwise indicated, and if called as a witness, I could and would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of correspondence from Edward A. Meilman to Christopher L. Kelley dated February 12, 2004.

3. Attached hereto as Exhibit B is a true and correct copy of correspondence from Christopher L. Kelley to Edward A. Meilman dated February 17, 2004.

4. Attached hereto as Exhibit C is a true and correct copy of this Court's Order Denying Defendants' Motion to Stay and Denying Plaintiff's Motion for Consolidation dated December 11, 2003.

5. Attached hereto as Exhibit D is a true and correct copy of the transcript from this Court's hearing on the Defendants' Motion to Stay and Ricoh's Motion to Consolidate held on December 9, 2003.

6. Attached hereto as Exhibit E is a true and correct copy of correspondence from Kenneth W. Brothers to Christopher L. Kelley dated March 5, 2004.

7. Attached hereto as Exhibit F is a true and correct copy of correspondence from Christopher L. Kelley to Edward A. Meilman dated August 27, 2003.

8. Attached hereto as Exhibit G is a true and correct copy of correspondence from Edward A. Meilman to Christopher L. Kelley dated September 12, 2003.

9. Attached hereto as Exhibit H is a true and correct copy of the Memorandum and Order of the district court for the United States District Court for the District of Delaware dated August 29, 2003.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration was executed in Menlo Park, California on March 9, 2004.

/s/ Erik K. Moller
Erik K. Moller

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

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February 12, 2004

BY FACSIMILE AND U.S. MAIL
(650) 463-8400

Christopher L. Kelley, Esq.
Howrey Simon Arnold & White, LLP
301 Ravenswood Avenue
Menlo Park, CA 94025

Re: *Ricoh v. Aeroflex*
Your Ref.: 06816.0060.000000
Our Ref.: R2180.0171

Dear Mr. Kelley:

Ricoh intends to amend its Complaint to add Aeroflex UTM as a defendant. The purpose of this letter is to seek your consent to the filing of the Amended Complaint, essentially using the same stipulation that you used to amend the answers. We also want to know whether you will accept service on behalf of Aeroflex UTM and stipulate that that Aeroflex answer is also the answer of Aeroflex UTM.

I enclose a draft amended complaint in redline form to show you the changes we have made. The essential differences between the enclosure and the original complaint are that Aeroflex UTM has been added, the references to Delaware have been removed and replaced with generic jurisdictional allegations, together with the fact that the defendants have consented to the jurisdiction of the California Court, and the claims alleged to be infringed have been identified as numbers 13-17.

In addition, we have taken the occasion to modify the infringement paragraph with respect to each defendant.. While we firmly believe that the original allegation was more than sufficient but even under your view of the allegation, this change eliminates the basis for your Rule 12(c) motion. We therefore ask you to withdraw that motion.

Please let me know by noon (EST) on Monday, February 16, 2004 whether you will consent to the amended complaint, and separately, to withdraw your Rule 12(c) motion.

In the event that you decide not to withdraw your Rule 12(c) motion, we want to put you on notice that we presently intend to advise the Court that we consider your motion to be frivolous in that it deliberately misinterprets the infringement

2101 L Street NW • Washington, DC 20037-1526

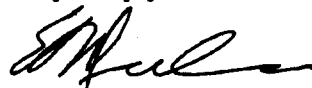
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Christopher L. Kelley, Esq.
February 12, 2004
Page 2

allegation in the original complaint and, in addition, necessarily will include a Rule 56(f) response despite Judge Jenkins direction not to cause such a response.

Very truly yours,



Edward A. Meilman

EAM/hc

cc: Gary Hoffman, Esq.
Kenneth Brothers, Esq. ✓
Jeffrey Demain, Esq.

Gary M. Hoffman, *admitted pro hac vice*
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Attorneys for Plaintiff Ricoh Company, Ltd.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

RICOH COMPANY, LTD.,

Plaintiff,

vs.

AEROFLEX INC.,
 AMI SEMICONDUCTOR, INC.
 MATROX ELECTRONIC SYSTEMS, LTD.
 MATROX GRAPHICS, INC.
 MATROX INTERNATIONAL, INC.
 MATROX TECH, INC.
 AEROFLEX UPMC

Defendants.

) Case No. C03-04669 MJJ

) **AMENDED COMPLAINT**

AMENDED COMPLAINT

Plaintiff Ricoh Company, Ltd. ("RicoH") for its Complaint against Defendants Aeroflex Incorporated ("Aeroflex"), AMI Semiconductor, Inc. ("AMI"), Matrox Electronic Systems Ltd. ("Matrox"), Matrox Graphics Inc. ("Matrox Graphics"), Matrox International Corp. ("Matrox Int'l"), ~~and~~ Matrox Tech, Inc. ("Matrox Tech"), and Aeroflex UPMC ("UPMC"), alleges as follows:

PARTIES

1
2 1. Plaintiff Ricoh is a corporation organized under the laws of Japan and maintains its
3 principal place of business at 3-6 1-chome, Nakamagome, Tokyo, Japan.

4
5 2. Upon information and belief, Defendant Aeroflex is a corporation organized under the
6 laws of the State of Delaware, and maintains its principal place of business at 35 S. Service
7 Road, Plainview, NY, 11803, ~~and has appointed The Corporation Trust Company, Corporation~~
8 ~~Trust Center, 1209 Orange Street, Wilmington, DE 19801 as its registered agent in Delaware.~~

9
10 Aeroflex is doing business in this jurisdiction and/or has committed the acts complained of in
11 this jurisdiction, and has consented to the jurisdiction of this Court for this action.
12

13 3. Upon information and belief, Defendant AMI is a corporation organized under the
14 laws of the State of Delaware, and maintains its principal place of business at 2300 Buckskin
15 Road, Pocatello, ID 83201, ~~and has appointed The Corporation Trust Company, Corporation~~
16 ~~Trust Center, 1209 Orange Street, Wilmington, DE 19801 as its registered agent in Delaware.~~

17
18 AMI is doing business in this jurisdiction and/or has committed the acts complained of in this
19 jurisdiction, and has consented to the jurisdiction of this Court for this action.
20

21 4. Upon information and belief, Defendant Matrox is a corporation organized under the
22 laws of Quebec, Canada, maintains its principal place of business at 1055 Boul St-Regis,
23 Dorval, Quebec H9P 2T4 Canada ~~and~~. Matrox is doing business in ~~Delaware~~ this jurisdiction
24 and/or has committed the acts complained of in Delaware this jurisdiction, and has consented
25 to the jurisdiction of this Court for this action.
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1 5. Upon information and belief, Defendant Matrox Graphics is a corporation organized
2 under the laws of Quebec, Canada, maintains its principal place of business at 1055 Boul St-
3 Regis, Dorval, Quebec H9P 2T4 Canada ~~and~~. Matrox Graphics is doing business in
4 Delaware this jurisdiction and/or has committed the acts complained of in ~~Delaware this~~
5 jurisdiction, and has consented to the jurisdiction of this Court for this action.
6

7 6. Upon information and belief, Defendant Matrox Int'l is a corporation organized under
8 the laws of New York, maintains its principal place of business at 625 State Rt 3, Unit B,
9 Plattsburgh, NY 12901, ~~and~~. Matrox Int'l is doing business in Delaware this jurisdiction and/or
10 has committed the acts complained of in Delaware this jurisdiction, and has consented to the
11 jurisdiction of this Court for this action.
12

13 7. Upon information and belief, Defendant Matrox Tech is a corporation organized
14 under the laws of the State of Delaware, maintains its principal place of business at 1075
15 Broken Sound Parkway, NW, Boca Raton, FL 33487-3524 ~~and has appointed The Corporation~~
16 ~~Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801 as its~~
17 ~~registered agent in Delaware.~~ Matrox Tech is doing business in this jurisdiction and/or has
18 committed the acts complained of in this jurisdiction, and has consented to the jurisdiction of
19 this Court for this action.
20

21 7.8. Upon information and belief, Defendant UTMC is a wholly-owned subsidiary of
22 Defendant Aeroflex, is also known as Aeroflex Microelectronic Solutions, Aeroflex UTMC
23 Microelectronic Solutions and Aeroflex Colorado Springs, formerly known as United
24 Technologies Microelectronics Center ("UTMC"), is a corporation organized under the laws
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1 of the State of Delaware and maintains a place of business at 1575 Garden of the Gods Road,
2 Colorado Springs, CO, 80907. UPMC is doing business in this jurisdiction and/or has
3 committed the acts complained of in this jurisdiction, and has consented to the jurisdiction of
4 this Court for this action.

6 JURISDICTION

7 8.9. This action arises under the patent laws of the United States, Title 35, United States
8 Code, and more particularly under 35 U.S.C. §§ 271 et. seq.

9 9.10. This Court has subject matter jurisdiction over this patent infringement action under
10 the Judicial Code of the United States, 28 U.S.C. §§ 1338(a) and 1331.

11 10.11. This Court has personal jurisdiction over the Defendants because Defendants are
12 present and/or doing business in ~~Delaware~~ this jurisdiction either directly or through their
13 agents, or alternatively, ~~are incorporated in Delaware~~ have consented to the jurisdiction of this
14 Court.

15 VENUE

16 11.12. Venue is proper in this district pursuant to 28 U.S.C. § 1391 in that Defendants
17 ~~reside~~ regularly transact business in this judicial district and/or -a substantial part of the
18 events or omissions giving rise to the claim occurred in this judicial district and/or are found
19 in this judicial district and/or are aliens.

20 FACTUAL BACKGROUND

1 12.13. On May 1, 1990, the U.S. Patent and Trademark Office ("USPTO") duly and legally
 2 issued United States Letters Patent No. 4,922,432 (the "'432 Patent") in the names of Hideaki
 3 Kobayashi and Masahiro Shindo for their invention titled "Knowledge Based Method and
 4 Apparatus for Designing Integrated Circuits using Functional Specifications." A copy of the
 5 '432 Patent is attached hereto as Exhibit 1.

7 13.14. By assignment, Ricoh is the owner of the entire right, title, and interest in the '432
 8 Patent and has the sole right to sue and recover for infringement thereof.

10 14.15. The '432 Patent describes, inter alia, a method for designing an application specific
 11 integrated circuit. By using the invention of the '432 Patent, one can define functional
 12 architecture independent specifications for an integrated circuit and translate functional
 13 architecture independent specifications into the detailed information needed for directly
 14 producing the integrated circuit.

17 PATENT INFRINGEMENT

18 COUNT 1

19 15.16. Ricoh repeats and realleges the allegations set forth in paragraphs 1 through 14
 20 hereof.

22 16.17. Upon information and belief, Aeroflex has been and is now infringing the '432 Patent
 23 by using, offering to sell, utilizing in the United States the process of one or more of claims 13-
 24 17 of the '432 Patent as part of the process of manufacturing application specific integrated
 25 circuits, and/or by selling, offering to sell and/or importing into the United States, application
 26 specific integrated circuits designed made with the use and/or by or using information

1 ~~generated by~~, the process of one or more of claims 13-~~20~~17 of the '432 Patent, either literally
2 or under the doctrine of equivalents.

3 17.18. Upon information and belief, Aeroflex will continue to infringe the '432 Patent unless
4 enjoined by this Court.

5
6 18.19. As a consequence of Aeroflex's infringement, Ricoh has been irreparably damaged to
7 an extent not yet determined, and Ricoh will continue to be irreparably damaged by such acts
8 in the future unless Aeroflex is enjoined by this Court from committing further acts of
9 infringement.

10
11 19.20. Upon information and belief, Aeroflex's infringement of the '432 Patent is willful.

12
13 20.21. Ricoh is entitled to recover damages adequate to compensate for Aeroflex's
14 infringement.

15
16 **COUNT 2**

17 21.22. Ricoh repeats and realleges the allegations set forth in paragraphs 1 through ~~14~~15
18 hereof.

19
20 22.23. Upon information and belief, AMI has been and is now infringing the '432 Patent by
21 using, offering to sell, utilizing in the United States the process of one or more of claims 13-17
22 of the '432 Patent as part of the process of manufacturing application specific integrated
23 circuits, and/or by selling, offering to sell and/or importing into the United States, application
24 specific integrated circuits designed ~~made with the use and/or by or using information~~
25 ~~generated by~~, the process of one or more of claims 13-~~20~~17 of the '432 Patent, either literally
26 or under the doctrine of equivalents.
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1 23.24. Upon information and belief, AMI will continue to infringe the '432 Patent unless
2 enjoined by this Court.—

3 24.25. As a consequence of AMI's infringement, Ricoh has been irreparably damaged to an
4 extent not yet determined, and Ricoh will continue to be irreparably damaged by such acts in
5 the future unless AMI is enjoined by this Court from committing further acts of infringement.
6

7 25.26. Upon information and belief, AMI's infringement of the '432 Patent is willful.

8
9 26.27. Ricoh is entitled to recover damages adequate to compensate for AMI's infringement.

10 **COUNT 3**

11 27.28. Ricoh repeats and realleges the allegations set forth in paragraphs 1 through ~~14~~15
12 hereof.

13
14 28.29. Upon information and belief, Matrox has been and is now infringing the '432 Patent by
15 ~~using, offering to sell~~utilizing in the United States the process of one or more of claims 13-17
16 of the '432 Patent as part of the process of manufacturing application specific integrated
17 circuits, and/or by selling, offering to sell and/or importing into the United States, application
18 specific integrated circuits designed ~~made with the use and/or by or using information~~
19 generated by, the process of one or more of claims 13-~~20~~17 of the '432 Patent, either literally
20 or under the doctrine of equivalents.

21
22
23 29.30. Upon information and belief, Matrox will continue to infringe the '432 Patent unless
24 enjoined by this Court.

25
26 30.31. As a consequence of Matrox's infringement, Ricoh has been irreparably damaged to an
27 extent not yet determined, and Ricoh will continue to be irreparably damaged by such acts in
28

1 the future unless Matrox is enjoined by this Court from committing further acts of
2 infringement.

3 ~~31.32.~~ Upon information and belief, Matrox's infringement of the '432 Patent is willful.

4
5 ~~32.33.~~ Ricoh is entitled to recover damages adequate to compensate for Matrox's
6 infringement.

7
8 COUNT 4

9 ~~33.34.~~ Ricoh repeats and realleges the allegations set forth in paragraphs 1 through ~~14~~15
10 hereof.

11 ~~34.35.~~ Upon information and belief, Matrox Graphics has been and is now infringing the '432
12 Patent by ~~using, offering to sell~~ utilizing in the United States the process of one or more of
13 claims 13-17 of the '432 Patent as part of the process of manufacturing application specific
14 integrated circuits, and/or by selling, offering to sell and/or importing into the United States,
15 application specific integrated circuits designed made with the use and/or by or using
16 information generated by, the process of one or more of claims 13-2017 of the '432 Patent,
17 either literally or under the doctrine of equivalents.

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21 ~~35.36.~~ Upon information and belief, Matrox Graphics will continue to infringe the '432 Patent
22 unless enjoined by this Court.

23
24 ~~36.37.~~ As a consequence of Matrox Graphics' infringement, Ricoh has been irreparably
25 damaged to an extent not yet determined, and Ricoh will continue to be irreparably damaged
26 by such acts in the future unless Matrox Graphics is enjoined by this Court from committing
27 further acts of infringement.
28

1 37.38. Upon information and belief, Matrox Graphics' infringement of the '432 Patent is
2 willful.

3 38.39. Ricoh is entitled to recover damages adequate to compensate for Matrox Graphics'
4 infringement.
5

6 **COUNT 5**

7 39.40. Ricoh repeats and realleges the allegations set forth in paragraphs 1 through ~~4~~15
8 hereof.
9

10 40.41. Upon information and belief, Matrox Int'l has been and is now infringing the '432.
11 Patent by using, offering to sell utilizing in the United States the process of one or more of
12 claims 13-17 of the '432 Patent as part of the process of manufacturing application specific
13 integrated circuits, and/or by selling, offering to sell and/or importing into the United States,
14 application specific integrated circuits designed made with the use and/or by or using
15 information generated by, the process of one or more of claims 13-2017 of the '432 Patent,
16 either literally or under the doctrine of equivalents.
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19 41.42. Upon information and belief, Matrox Int'l will continue to infringe the '432 Patent
20 unless enjoined by this Court.
21

22 42.43. As a consequence of Matrox Int'l's infringement, Ricoh has been irreparably damaged
23 to an extent not yet determined, and Ricoh will continue to be irreparably damaged by such
24 acts in the future unless Matrox Int'l is enjoined by this Court from committing further acts of
25 infringement.
26

27 43.44. Upon information and belief, Matrox Int'l's infringement of the '432 Patent is willful.
28

1 ~~44.45.~~ Ricoh is entitled to recover damages adequate to compensate for Matrox Int'l's
2 infringement.

3 **COUNT 6**

4
5 ~~45.46.~~ Ricoh repeats and realleges the allegations set forth in paragraphs 1 through ~~14~~15
6 hereof.

7 ~~46.47.~~ Upon information and belief, Matrox Tech has been and is now infringing the '432
8 Patent by ~~using, offering to sell~~utilizing in the United States the process of one or more of
9 claims 13-17 of the '432 Patent as part of the process of manufacturing application specific
10 integrated circuits, and/or by selling, offering to sell and/or importing into the United States,
11 application specific integrated circuits ~~designed-made with the use and/or by or using~~
12 ~~information generated by,~~ the process of one or more of claims 13-~~20~~17 of the '432 Patent,
13 either literally or under the doctrine of equivalents.
14
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17 ~~47.48.~~ Upon information and belief, Matrox Tech will continue to infringe the '432 Patent
18 unless enjoined by this Court.

19
20 ~~48.49.~~ As a consequence of Matrox Tech's infringement, Ricoh has been irreparably damaged
21 to an extent not yet determined, and Ricoh will continue to be irreparably damaged by such
22 acts in the future unless Matrox Tech is enjoined by this Court from committing further acts
23 of infringement.
24

25 ~~49.50.~~ Upon information and belief, Matrox Tech's infringement of the '432 Patent is willful.

26 ~~50.51.~~ Ricoh is entitled to recover damages adequate to compensate for Matrox Tech's
27 infringement.
28

COUNT 7

52. Ricoh repeats and realleges the allegations set forth in paragraphs 1 through 15 hereof.

53. Upon information and belief, UPMC has been and is now infringing the '432 Patent by utilizing in the United States the process of one or more of claims 13-17 of the '432 Patent as part of the process of manufacturing application specific integrated circuits, and/or by selling, offering to sell and/or importing into the United States, application specific integrated circuits made with the use and/or by the process of one or more of claims 13-17 of the '432 Patent, either literally or under the doctrine of equivalents.

54. Upon information and belief, UPMC will continue to infringe the '432 Patent unless enjoined by this Court.

55. As a consequence of UPMC's infringement, Ricoh has been irreparably damaged to an extent not yet determined, and Ricoh will continue to be irreparably damaged by such acts in the future unless UPMC is enjoined by this Court from committing further acts of infringement.

56. Upon information and belief, UPMC's infringement of the '432 Patent is willful.

57. Ricoh is entitled to recover damages adequate to compensate for UPMC's infringement.

PRAYER FOR RELIEF

WHEREFORE, Ricoh prays for entry of judgment:

A. that Aeroflex has infringed the '432 Patent;

1 B. that Aeroflex, its agents, employees, representatives, successors, and assigns and those
2 acting, or purporting to act, in privity or in concert with Aeroflex, be preliminarily and
3 permanently enjoined from further infringement of the '432 Patent;

4 C. that Aeroflex account for and pay to Ricoh all damages under 35 U.S.C. § 284, including
5 enhanced damages, caused by the infringement of the '432 Patent, and attorneys' fees
6 pursuant to 35 U.S.C. § 285;

7 D. that Ricoh be granted pre-judgment and post-judgment interest on the damages caused to
8 it by reason of Aeroflex's infringement of the '432 Patent;

9 E. that AMI has infringed the '432 Patent;

10 F. that AMI, its agents, employees, representatives, successors, and assigns and those acting,
11 or purporting to act, in privity or in concert with AMI, be preliminarily and permanently
12 enjoined from further infringement of the '432 Patent;

13 G. that AMI account for and pay to Ricoh all damages under 35 U.S.C. § 284, including
14 enhanced damages, caused by the infringement of the '432 Patent, and attorneys' fees
15 pursuant to 35 U.S.C. § 285;

16 H. that Ricoh be granted pre-judgment and post-judgment interest on the damages caused to
17 it by reason of AMI's infringement of the '432 Patent;

18 I. that Matrox has infringed the '432 Patent;

19 J. that Matrox, its agents, employees, representatives, successors, and assigns and those
20 acting, or purporting to act, in privity or in concert with Matrox, be preliminarily and
21 permanently enjoined from further infringement of the '432 Patent;

1 K. that Matrox account for and pay to Ricoh all damages under 35 U.S.C. § 284, including
2 enhanced damages, caused by the infringement of the '432 Patent, and attorneys' fees
3 pursuant to 35 U.S.C. § 285;

4
5 L. that Ricoh be granted pre-judgment and post-judgment interest on the damages caused to
6 it by reason of Matrox's infringement of the '432 Patent;

7 M. that Matrox Graphics has infringed the '432 Patent;

8
9 N. that Matrox Graphics, its agents, employees, representatives, successors, and assigns and
10 those acting, or purporting to act, in privity or in concert with Matrox Graphics, be
11 preliminarily and permanently enjoined from further infringement of the '432 Patent;

12
13 O. that Matrox Graphics account for and pay to Ricoh all damages under 35 U.S.C. § 284,
14 including enhanced damages, caused by the infringement of the '432 Patent, and attorneys'
15 fees pursuant to 35 U.S.C. § 285;

16
17 P. that Ricoh be granted pre-judgment and post-judgment interest on the damages caused to
18 it by reason of Matrox Graphics' infringement of the '432 Patent;

19
20 Q. that Matrox Int'l has infringed the '432 Patent;

21 R. that Matrox Int'l, its agents, employees, representatives, successors, and assigns and those
22 acting, or purporting to act, in privity or in concert with Matrox Int'l, be preliminarily and
23 permanently enjoined from further infringement of the '432 Patent;

24
25 S. that Matrox Int'l account for and pay to Ricoh all damages under 35 U.S.C. § 284,
26 including enhanced damages, caused by the infringement of the '432 Patent, and attorneys'
27 fees pursuant to 35 U.S.C. § 285;

1 T. that Ricoh be granted pre-judgment and post-judgment interest on the damages caused to
2 it by reason of Matrox Int'l's infringement of the '432 Patent;

3 U. that Matrox Tech has infringed the '432 Patent;

4 V. that Matrox Tech, its agents, employees, representatives, successors, and assigns and
5 those acting, or purporting to act, in privity or in concert with Matrox Tech, be preliminarily
6 and permanently enjoined from further infringement of the '432 Patent;

7 W. that Matrox Tech account for and pay to Ricoh all damages under 35 U.S.C. § 284,
8 including enhanced damages, caused by the infringement of the '432 Patent, and attorneys'
9 fees pursuant to 35 U.S.C. § 285;

10 X. that Ricoh be granted pre-judgment and post-judgment interest on the damages caused to
11 it by reason of Matrox Tech's infringement of the '432 Patent;

12 Y. that costs be awarded to Ricoh; and

13 Z. that Ricoh be granted such other and further relief as the Court may deem just and proper
14 under the current circumstances;.
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2
3 AA. that UTMC has infringed the '432 Patent;

4 BB. that UTMC, its agents, employees, representatives, successors, and assigns and those
5 acting, or purporting to act, in privity or in concert with UTMC, be preliminarily and
6 permanently enjoined from further infringement of the '432 Patent;

7
8 CC. that UTMC account for and pay to Ricoh all damages under 35 U.S.C. § 284, including
9 enhanced damages, caused by the infringement of the '432 Patent, and attorneys' fees
10 pursuant to 35 U.S.C. § 285; and

11
12 DD. that Ricoh be granted pre-judgment and post-judgment interest on the damages
13 caused to it by reason of UTMC's infringement of the '432 Patent.
14

15 Ricoh Company, Ltd.

16 By: _____
17 Jeffrey B. Demain (SBN 126715)
18 Jonathan Weissglass (SBN 185008)
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Counsel for Plaintiff,
Rico Company.



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A LIMITED LIABILITY PARTNERSHIP

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February 17, 2004

VIA FACSIMILE AND U.S. MAIL

Edward A. Meilman
Dickstein Shapiro Morin & Oshinsky, LLP
1177 Avenue of the Americas
New York, NY 10036-2714

Re: *Ricoh Company, Ltd. v. Aeroflex, Inc., et al.*
Case No. CV 03-04669 MJJ (MCC)

Dear Ed:

I have your letter to me dated February 12.

We are unable to stipulate to your amendment. For the reasons set out in our Motion on the Pleadings, Ricoh cannot make out an allegation under 35 U.S.C. section 271(g) in the present case. Your proposed amended complaint does nothing to correct this problem. Since the proposed amended complaint still contains the same infringement allegations under section 271(g) we cannot agree to your amendment.

In addition, Ricoh has provided no explanation as to why it delayed so long before seeking to add infringement allegations under provisions of section 271 other than subdivision (g). The Defendants made Ricoh aware of the problem that it faced in asserting infringement under 271(g) no later than last August. Without some explanation as to why amendment is appropriate or necessary at this late date, the Defendants cannot support your request to amend.

Finally, your proposed amendment seeks to add an entity that you identify as "Aeroflex UTM." There is no existing corporate entity with that name that can be sued or served with process. Furthermore, there is no need to add a separate entity to get at activities conducted at Aeroflex's facility in Colorado Springs acquired from United Technologies (UTMC). That entity was acquired by Aeroflex and is now a subsidiary of Defendant Aeroflex, Inc.

Very truly yours,

Christopher L. Kelley

CLK:gg

cc: Gary M. Hoffman



301 RAVENSWOOD AVENUE
 MENLO PARK, CA 94025-3434
 PHONE: 650.463.8100 • FAX: 650.463.8400

FACSIMILE COVER SHEET

DATE: February 17, 2004

TO:

1. NAME:	<u>Edward A. Meilman</u>	COMPANY:	<u>Dickstein Shapiro, et al.</u>
CITY:	<u>New York, NY</u>	FAX #:	<u>(212) 997-9880</u>
		PHONE #:	<u>(212) 835-1400</u>
2. NAME:	<u>Gary M. Hoffman</u>	COMPANY:	<u>Dickstein Shapiro, et al.</u>
CITY:	<u>Washington, DC</u>	FAX #:	<u>(202) 887-0689</u>
		PHONE #:	<u>(202) 785-9700</u>
3. NAME:	_____	COMPANY:	_____
CITY:	_____	FAX #:	_____
		PHONE #:	_____
4. NAME:	_____	COMPANY:	_____
CITY:	_____	FAX #:	_____
		PHONE #:	_____
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FROM: NAME: Christopher L. Kelley

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Re: Ricoh v. Aeroflex, et al.

PLEASE SEE ATTACHED CORRESPONDENCE DATED FEBRUARY 17, 2004

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REASON FOR ERROR
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E-2) BUSY
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- NAME: Edward A. Meilman COMPANY: Dickstein Shapiro, et al.
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- NAME: Gary M. Hoffman COMPANY: Dickstein Shapiro, et al.
 CITY: Washington, DC FAX #: (202) 887-0689 PHONE #: (202) 785-9700
- NAME: _____ COMPANY: _____
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REASON FOR ERROR
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DATE: February 17, 2004

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CITY: FAX #: PHONE #:

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CITY: FAX #: PHONE #:

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Re: Ricoh v. Aeroflex, et al.

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICOH COMPANY, LTD.,

No. C 03-4669 MJJ

Plaintiff,

v.

**ORDER DENYING DEFENDANTS'
MOTION FOR STAY AND DENYING
PLAINTIFF'S MOTION FOR
CONSOLIDATION**

AEROFLEX INC., et al.,

Defendants.

Having read and considered the briefing and oral argument with respect to Defendants' motion to stay this action pending the outcome in the related case of *Synopsis v. Ricoh*, 03-2289-MJJ, the Court hereby **DENIES** Defendants' motion. As expressed by the Court at oral argument, the Court finds that there is an inadequate basis to conclude that the overlap in infringement issues in the two cases is so substantial as to render the case within the customer suit exception to the first-to-file rule. Rather, on the limited record before the Court it appears Ricoh has a "separate interest" in litigating against Defendants in the first-filed action. *See, e.g., American Academy of Science v. Novell, Inc.*, 24 U.S.P.Q.2d 1386, *7 (N.D. Cal. 1992); *A.P.T., Inc. v. Quad Environmental Technologies Corp.*, 698 F. Supp. 718, 721 (N.D. Ill. 1988). Accordingly, it would be inappropriate

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///


///

1 to stay the case at this time. *See Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal.
2 1997) (discussing factors court considers in deciding whether to grant stay).

3 Likewise, Plaintiff's motion to consolidate is **DENIED** as premature.
4

5 **IT IS SO ORDERED.**

6
7 Dated: December 11, 2003


MARTIN J. JENKINS
UNITED STATES DISTRICT JUDGE

1 Pages 1-36

2 UNITED STATES DISTRICT COURT

3 NORTHERN DISTRICT OF CALIFORNIA

4 BEFORE THE HONORABLE MARTIN J. JENKINS, JUDGE

5 RICOH COMPANY, LTD.,

6 Plaintiff,

7 vs

Case No. C-03-4669 MJJ

8 AEROFLEX INCORPORATED, AMI
SEMICONDUCTOR, INC., MATROX

9 ELECTRONIC SYSTEMS, LTD.,
MATROX GRAPHICS, INC., MATROX

10 INTERNATIONAL CORP., and
MATROX TECH, INC.,

11

Defendants.

12

/

13

REPORTER'S TRANSCRIPT OF PROCEEDINGS

14

TUESDAY, DECEMBER 9, 2003 - 10:13 A.M.

15

16 APPEARANCES:

17 For the Plaintiff: DICKSTEIN, SHAPIRO MORIN & OSHINKSY
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18 Washington, DC 20037-1526
202 429-2184

19 BY: KENNETH W. BROTHERS
Attorney at Law

20

- appearances continued next page -

21

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transcript produced by realtime computer translation.)

25

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9 ERIK K. MOLLER
Attorneys at Law

10

11

12 Also present: ERIK OLIVER
Senior IP Counsel
13 TED W. CHAN
Senior Director, IP
14 Synopsys, Incorporated
700 East Middlefield Road
15 Mountain View, California 94043

16

17

18

19

20

21

22

23

24

25

1 TUESDAY, DECEMBER 9, 2003

10:13 A.M.

2 PROCEEDINGS

3 THE CLERK: Civil matter No. 03-4669, Ricoh Company
4 versus Aeroflex, Incorporated.

5 Please state your appearance.

6 MR. MAVRAKAKIS: Good morning, Your Honor.

7 Tom Mavrakakis on behalf of the defendants. With
8 me, I have Erik Moller.

9 And also in the courtroom are Erik Oliver and Ted
10 Chan from Synopsys.

11 MR. BROTHERS: Good morning.

12 Ken Brothers with Dickstein, Shapiro, Morin &
13 Oshinsky.

14 With me is John Weissglass --

15 THE COURT: You can continue. Go ahead.

16 MR. BROTHERS: With me is John Weissglass of the
17 Altshuler Berzon firm.

18 THE COURT: Okay. The motion that the Court has
19 before it was the initially -- Synopsys's motion for a stay
20 and the rejoinder -- that was also a motion -- I believe
21 that's right -- is that right?

22 MR. MAVRAKAKIS: Actually, it's the defendant's
23 motion to --

24 THE COURT: Excuse me. The defendant.

25 MR. MAVRAKAKIS: Aeroflex.

1 THE COURT: -- Aeroflex. Sorry --

2 And then there's a motion to consolidate that came
3 in the context of the briefing on this question.

4 Let me tell you why I brought you in.

5 There are some shifting sands here that don't make
6 good sense to me, to be quite honest with you.

7 I should start by saying that I'm -- I'm -- I'm
8 concerned about what really are the operative underlying
9 facts that support the action against the -- I'll say
10 Aeroflex defendants and how those are -- notwithstanding the
11 fact that it involves at least Claim 13 -- claims of
12 process -- how those are distinctly different than what may
13 give rise to a -- the infringement issues that are involved
14 in the Synopsys/Ricoh action.

15 There is a dispute in this record as to whether
16 there is an infringement claim involved in this action.

17 It seems to me that there is, that they do allege
18 and seek a declaration of non-infringement and patent
19 invalidity.

20 Now, I don't know what facts embolden that request
21 for injunctive relief.

22 But I disagree -- I don't think that I can read and
23 do read cases like ATP versus QuadComm (phonetic) to set
24 forth a general proposition with respect to patents that
25 claim a process -- it strikes me that that's not the

1 brightline rule that I would derive from those cases.

2 Looking at the issue in total fashion from the
3 first-to-file rule to the exceptions that get postulated, it
4 strikes me that that's the context in which I read these
5 cases. And that reads on then the standards that obtain to
6 request for a stay and whether or not the Court should
7 exercise its inherent discretion to grant a stay.

8 And so, it does strike me -- we could talk a little
9 bit about -- a lot about whether or not these defendants
10 agree to be bound by any judgment that would be made in the
11 Synopsys/Ricoh action with respect to any and all ways that
12 there might be infringement derived from the Design Compiler
13 here.

14 But it strikes me that where the rubber really meets
15 the road is, how different are the two actions? What is in
16 play factually with respect to the liability question?

17 The Court can always tier in the issues of damages
18 at a certain point, but what economies of scale are there
19 really in a way that is non-prejudicial? What economies of
20 scale would there be in staying the one action versus the
21 other?

22 And that strikes me that puts us right on what's
23 going to be litigated in those two actions.

24 And that's not clear to me at all. That's why --
25 that's the point I made about the shifting sands concerns,

1 because it's not clear to me what the interface is between
2 the actions that are taken by the ASIC defendants relative to
3 the use of the Design Compiler and how that's different than
4 the allegations of infringement that involve Synopsys.

5 MR. BROTHERS: Your Honor, if I could respond?

6 The issue with respect to -- first, let me address
7 in general the legal standards that I think there should be
8 some consensus.

9 Now, both sides have cited the Rivers versus Disney
10 three-part test for granting a stay, but as Your Honor noted,
11 there is the patent overlay.

12 And I think the standards as set forth in the
13 Kahn case clearly articulate the Federal Circuit's rule with
14 respect to stays.

15 Our point in citing the process patent cases was to
16 point out that this case -- this claim, involves in Claim 13,
17 a process patent.

18 And the defendants have not cited any cases which
19 involve a process patent where a stay has been granted, and
20 that's because in the use of process patents it is the entity
21 who is actually performing the process at issue that is the
22 direct infringer.

23 For example, in --

24 THE COURT: But that's clear to me upon reading the
25 cases. I -- look -- that the rights extend only to the

1 process and not the patent is the point that you make from --
2 from those cases.

3 But it strikes me that theoretically --
4 theoretically, if, in fact, factually in terms of how the
5 patent is infringed, if there is no distinction between the
6 two, why wouldn't it then be the rule that the exception
7 could apply?

8 MR. BROTHERS: Well, the issue is, are there claims
9 of infringement in the Synopsys versus Ricoh action?

10 The short answer is, no.

11 There is a claim of non-infringement. Now, the
12 Synopsys complaint, paragraph 18, states, "There are no
13 Synopsys products whatsoever that infringe the '432 patent."

14 In order to have a hearing on non-infringement as
15 pled, every Synopsys product will need to be compared to the
16 '432 patent.

17 By contrast, Ricoh's claims against the ASIC
18 defendants put at issue their specific use of a process which
19 includes the use of Design Compiler, but as stated in
20 Claim 13, there are additional steps --

21 THE COURT: What -- what are they?

22 MR. BROTHERS: Well, how much time do we have?

23 I can give you some examples.

24 For example, in Clause 2 of Claim 13 it recites a
25 set of definitions of an architecture-independent action and

1 condition to be used. And the infringing element is when the
2 ASIC designers and not Synopsys select what's called a
3 "synthetic operator," which is a form of, we contend, an
4 architecture-independent action and condition, those
5 synthetic operators can be outside products. They can be
6 products that are made by Synopsys separate from Design
7 Compiler, such as the HDL compiler family of products.

8 There's the VHDL compiler. There is the HDL
9 compiler for Verilog.

10 THE COURT: What does it do? Does it allow the
11 software program to -- once that synthetic operator selector
12 is chosen to then -- then design an integrated circuit? What
13 does it actually do?

14 MR. BROTHERS: Let me contrast it. It is a process
15 by which the input descriptions -- the description of what
16 the ASIC is ultimately going to do -- how those
17 specifications are established.

18 Now, Design Compiler can accept other types of
19 inputs that are not architecture-independent actions and
20 conditions.

21 For example, there's something called a "netlist."

22 A netlist we do not believe is an
23 architecture-independent action and condition.

24 THE COURT: So, is that -- is that the category
25 of -- of selection or action that in -- when utilized with

1 Design Compiler constitutes -- or reads on the process claim
2 that you assert --

3 MR. BROTHERS: Oh, it is -- oh, it is when --

4 THE COURT: Are there others?

5 MR. BROTHERS: Well, I -- I'm sorry --

6 THE COURT: Are there other --

7 MR. BROTHERS: Well, let --

8 THE COURT: -- independent architectural --
9 independent actors that can also suffice to -- when utilized
10 and selected by the ASIC defendants also work with Design
11 Compiler to constitute infringement?

12 MR. BROTHERS: Well, it -- to be certain this is
13 going to turn ultimately on the Markman construction of what
14 architecture-independent action and condition comprises.

15 We believe that a netlist does not constitute
16 something that falls within Claim 2 of the patent.

17 There are others.

18 For example, something called a "structure RTL,"
19 which is a Register Transfer Level.

20 We do not believe that that is an
21 architecture-independent action and condition.

22 So, if the ASIC defendants elected to use either a
23 netlist or structural RTL in their design of what goes into
24 these ASICs, they are not violating the patent.

25 They are using Design Compiler, but because they,

1 the ASIC defendants --

2 THE COURT: Well, let me just stop right there.

3 MR. BROTHERS: Sure.

4 THE COURT: Let me -- let me have a sense of -- of
5 how you view the non-infringement action and what may be in
6 play there.

7 MR. MAVRAKAKIS: Sure. The non-infringement
8 declaratory judgment action, Your Honor, was based on the
9 suit that was brought in Delaware and the letters that were
10 sent to Synopsys's customers here in California.

11 And if you look at those letters, and what's at
12 issue in the Delaware action, what we have here is a claim
13 for non-infringement of its logic synthesis products.

14 Now, if you go to the web site you'll see that there
15 are only a few.

16 But clearly, in the context of looking at the
17 letters and the controversy before this Court, the only thing
18 implicated is Design Compiler and the products that are used
19 with it.

20 Now, my colleague here mentioned HDL

21 THE COURT: He disputes that in part based on a
22 construction that he is hoping to obtain from the Court with
23 respect to the elements of the -- of the patent.

24 MR. MAVRAKAKIS: Well, let me just explain that, the
25 technical part, for you -- for you a little bit.

1 HDL compiler gets sold with Design Compiler. It's a
2 necessary part of Design Compiler. Really, what he's saying
3 is that there are four potential inputs to Design Compiler,
4 and three of them can infringe.

5 Well, if the fourth input cannot be capable of
6 infringing, then the issue is resolved.

7 I mean, the customers don't get the source code.
8 They can't change the capabilities of the Design Compiler.

9 Either it's capable of infringing or it's not
10 capable of infringing. Additional steps are not going to
11 make it infringing.

12 And if you look here at the record, we asked these
13 questions, Your Honor --

14 THE COURT: Yeah. I -- I read that.

15 MR. MAVRAKAKIS: Okay.

16 THE COURT: That's part of the shifting sands.
17 Really, what it comes down to, is understanding the
18 technology.

19 MR. MAVRAKAKIS: I was just going to address those
20 specific process steps, and specifically, in their
21 interrogatory response, they say, those process steps are
22 performed by the defendants using Design Compiler.

23 And that's Moller Exhibit C.

24 MR. BROTHERS: Your Honor, there's no question that
25 Design Compiler is -- provides the framework for the -- what

1 we contend are the independent actions by the ASIC defendants
2 in infringing.

3 It is similar to --

4 THE COURT: Are you -- are you -- would you be
5 precluded now -- that's a very broad term, because it strikes
6 me that there -- there will be issues of discovery --
7 obtaining some backdrop as to how these
8 architectural-independent actors are selected, that then will
9 come into play to determine post-claims construction whether
10 or not there is infringement or not.

11 Why isn't that all viable if it's -- with respect to
12 the -- as a matter of liability and invalidity, why isn't
13 that all viable in the Synopsys/Ricoh action?

14 MR. BROTHERS: There are three reasons, Your Honor.

15 First, because the ASIC defendants cannot be held
16 liable for infringement in a D.J. action.

17 All of the same issues are going to be in play. As
18 Your Honor has pointed out, there will be discovery of the
19 ASIC defendants in the D.J. action, because, as pled by
20 Synopsys, all of their products -- it's not limited, as
21 counsel has stated in paragraph 18 -- it's -- all of their
22 products are placed at issue.

23 Now, they may seek to narrow that at some point.

24 Whereas, by contrast, we have claims against six
25 specific ASIC defendants. And the issue will be much

1 narrower and much tighter focus on what these six ASIC
2 defendants do, as opposed to any potential use.

3 THE COURT: But there is overlap.

4 MR. BROTHERS: Sorry?

5 THE COURT: There is overlap, right?

6 MR. BROTHERS: Oh, there is -- sure. There is
7 overlap, which is why we contend that the issues ought -- the
8 two cases should be joined for consolidation.

9 Your Honor saw that when the ASIC defendants moved
10 for a stay in Delaware, or in the alternative for a transfer,
11 they repeatedly said, "If the Delaware court doesn't stay it,
12 transfer it here for consolidation." And that's what we
13 think the logical process should be.

14 I should note that in Delaware the parties
15 identified a trial to take ten trial days.

16 In the proposed case management order here, the
17 Synopsys case, the parties agreed on eight trial days. So,
18 there's a two-day difference. And we think since there is
19 substantial overlap, that two-day difference is attributable
20 to damages.

21 There is -- since there's going to be discovery of
22 the ASIC defendants in the declaratory judgment action, it
23 makes sense to proceed with consolidated action in which
24 Ricoh presents its claims of infringement, and then the
25 defendants proceed with either their claims of

1 non-infringement or trying to invalidate the patent.

2 THE COURT: Let me ask you, do the ASIC defendants
3 have a -- since it looks to me like -- in terms of
4 representations of one of half -- it's both, do the ASIC
5 defendants have a different view of the claims construction
6 issues than Synopsys, so that, for instance, if this Court
7 issues a claim construction order -- if it were to grant your
8 motion for a stay, would it then -- because it's not going to
9 completely resolve the liability questions; there are still
10 some issues that may have to be resolved -- particularly with
11 respect to -- to the damages, and there may even be
12 infringement issues that have to be resolved -- would the
13 ASIC defendants be standing before this Court saying that
14 this Court needs to conduct claims construction anew?

15 MR. MAVRAKAKIS: No, because the ASIC defendants
16 have said that they are willing to be bound -- and they will
17 be judicially estopped. They are represented by the same
18 counsel.

19 They don't add anything to the process that this
20 Court's going to go through under the local rules, all the
21 way up through claim construction, and at that point both the
22 ASIC defendants and Synopsys think that this case is going to
23 be ripe for summary judgment on the issues of infringement
24 and validity, if not both.

25 Now, so, of course, the -- being willing to -- when

1 we get to the end of the Synopsys declaratory judgment
2 action, should you stay the case against these defendants,
3 defendants will be bound by the validity determination,
4 because they are represented by the same counsel which -- we
5 are going to bring up the same prior art, Your Honor. We are
6 going to file the same invalidity contentions on behalf of
7 the ASIC defendants and Synopsys.

8 That's why the ASIC defendants in considering
9 whether they were going to agree to be bound, they had to
10 think about it, and before I could make that statement in my
11 brief I had to -- you know, to discuss it with my clients and
12 make them understand that they are giving up something. They
13 are not -- they wouldn't be parties to this Synopsys action,
14 but really, they are just giving up that argument that they
15 won't be bound, because they are not parties, and they are
16 willing to bound by the validity issues.

17 So, if Ricoh prevails on validity, then they will be
18 bound by this determination.

19 If Synopsys prevails, obviously the case is over
20 under the Supreme Court's decision in --

21 THE COURT: But it might --

22 MR. MAVRAKAKIS: -- on infringement, if the Court
23 determines that --

24 THE COURT: -- not be. What if there -- what if
25 there are independent architectural design selections that

1 are not in play -- not in play in the Synopsys/Ricoh suit?

2 Then the Court would have to deal with those; wouldn't it?

3 MR. MAVRAKAKIS: Well, Your Honor --

4 THE COURT: I am not saying that it's not an economy
5 of scale savings if I stay the action. I am just saying,
6 isn't that a fact?

7 MR. MAVRAKAKIS: It depends on --

8 THE COURT: We are talking about the situation now
9 where the patent has been held valid or not, or that hasn't
10 been proved to be invalid, and that the ordinary use of
11 Design Compiler does not infringe, right?

12 If that infringement is based on some of the steps
13 that he is not pointing out -- in other words, some of the
14 steps four, five and six, or I think five and six -- if
15 Design Compiler is incapable of performing those steps, it
16 doesn't matter what the additional acts are. There won't be
17 any infringement.

18 Now, is there some small possibility that with
19 respect to the input portion that the defendants use some
20 other software that may -- you know, create an additional
21 infringement issue? Yes.

22 But if you narrow it down, you see here it's -- it's
23 a very slim possibility. And are you willing to make
24 discovery of -- give discovery by the ASIC defendants, even
25 if the Court stayed this action in the Ricoh versus Synopsys

1 action?

2 MR. MAVRAKAKIS: Well, I was going to address that
3 issue.

4 I think that Synopsys has a whole applications
5 group, and the issue here with respect to the -- to these
6 defendants is the ordinary use of Synopsys's Design Compiler.

7 And they don't have any basis for saying that there
8 is anything else. There's none in the deposition that we
9 took of Mr. Ishijima. There's none in their interrogatory
10 responses. So, we are really talking about a fishing
11 expedition. And the threshold issue --

12 THE COURT: Well, now you are arguing your discovery
13 motion.

14 MR. MAVRAKAKIS: Hmm?

15 THE COURT: Now you are arguing your discovery
16 motion.

17 MR. MAVRAKAKIS: Right. And when -- what I -- what
18 I -- and I don't want to get off on a tangent here, Your
19 Honor. But what I'm saying, really the threshold issue is
20 whether Design Compiler can infringe.

21 And for most of the case -- most of the iterations
22 of possibilities here, that's going to resolve the case.

23 Now, if the ordinary use of Design Compiler is found
24 to infringe -- I mean, this is 20 percent of Synopsys's
25 revenue -- they are not going to let their customers hang out

1 to dry. They are going to have to find some resolution with
2 Kieko (phonetic).

3 THE COURT: That's your licensing --

4 MR. MAVRAKAKIS: Right.

5 THE COURT: -- component?

6 MR. BROTHERS: Your Honor, I smile, because when --
7 my -- my -- my friend here says that the issue is whether
8 Design Compiler infringes, that's the issue in this case,
9 that's the issue that Ricoh is alleging against the ASIC
10 defendants.

11 And under -- under Ricoh's theory, each of the
12 steps -- each of the claims is set forth in Claim 3 at
13 significant points. We believe that those are independent
14 actions.

15 Now, I gave you an example of Claim 2. I can give
16 you more examples from -- Claims 3, there was reference to
17 whether the specific compiler, the VEL compiler, was shipped
18 with Design Compiler.

19 It is shipped; but again, it is the option of the
20 defendants, the ASIC defendants.

21 THE COURT: So, you don't disagree, though. Those
22 products go in tandem.

23 MR. BROTHERS: Well, sure. They are both Synopsys
24 products. I -- I understand that. Let me give you an
25 example with respect to Claim 3, which is storing data,

1 designing a set of available integrated circuit hardware
2 sales for performing -- performing actions in additions
3 stored.

4 There is the option to store this. Libraries can be
5 used. They can have the choice to use Synopsys's libraries
6 or they can use libraries that are made and produced by third
7 parties. For example, the foundries, the -- the places that
8 actually make these computer chips, frequently have their
9 own libraries.

10 And from the information -- limited information --
11 because we have been stonewalled on discovery by the ASIC
12 defendants -- the limited information we have, we believe
13 these foundries make these libraries readily available.

14 In fact, we have information that some of the ASIC
15 defendants -- I believe it's AMIS -- has created its
16 own libraries and then provides them to Synopsys for
17 distribution to other customers of Synopsys.

18 But they are -- my point is that there are a number
19 of libraries that can be used that are not specific to
20 Design Compiler, some of which may, may not, be -- constitute
21 infringement; others which may.

22 Now, we don't -- we haven't been able to get access
23 to any of that information, as the Court has seen in the
24 discovery motions.

25 My underlying point, however, is --

1 THE COURT: It moves us -- you know, it moves us
2 off, I think, the more central point, which is, as you filed
3 this action how you envision infringement occurring. And
4 that strikes me that it's more consistent with the universe
5 of -- of products -- some of which are mailed or used in
6 tandem, some of which may -- not all of which implicate a
7 process for use with the Design Compiler --

8 MR. BROTHERS: That process --

9 THE COURT: -- and --

10 MR. BROTHERS: -- Focuses on --

11 THE COURT: -- and some of which may not actually
12 infringe.

13 MR. BROTHERS: That's right.

14 And that's -- the process has to focus in on what
15 the ASIC defendants do.

16 It is theoretically possible in the declaratory
17 judgment action to have a declaratory judgment finding that
18 there are some uses of Design Compiler that do not infringe
19 the '432 patent.

20 And there are some uses of Design Compiler that do
21 infringe the '432 patent.

22 THE COURT: That's going to take us a long way
23 toward discerning the liability of the ASIC defendants; isn't
24 it?

25 MR. BROTHERS: No. Because the -- the question of

1 whether the ASIC defendants infringe the '432 patent turn on
2 what they specifically do.

3 I can stand here right now and tell you there are
4 uses of Design Compiler that do not infringe the '432 patent,
5 and there are those that we believe do.

6 Now, I -- I am prepared to address the ASIC
7 defendants' contentions of what was said or not said at the
8 Ishijima deposition and what was not --

9 THE COURT: I don't think that resolves it. One of
10 the things -- to be quite candid -- that I was thinking about
11 last night as I read through this is that some of this is a
12 question of what discovery may disclose.

13 MR. BROTHERS: That's right.

14 THE COURT: And I have real concerns, to be quite
15 honest with you, with -- with making a determination that
16 would stay the action at this juncture without knowing that
17 and being able to -- in my view, read on discovery on the
18 issues of -- of -- of prejudice and -- and hardship.

19 Those factors in the context of the cases that --
20 that talk about -- and make a distinction on those facts with
21 respect to process patents.

22 I don't read the cases as -- as broadly as you do.

23 I do think it's a fairly fact-specific
24 determination.

25 But quite candidly, I don't know that I really

1 comprehend the burgeoning factual scenarios that may occur
2 sufficiently to make that determination at this juncture.

3 My inclination is to deny the motion.

4 You do have a discovery issue that I know that
5 Synopsys believes that there may be some real -- it may be
6 very burdensome to comply with, amongst other objections that
7 you have.

8 But it strikes me that -- that the better way to
9 deal with this is -- is for me to keep those issues,
10 streamline this, make that determination -- I can deal with
11 that scope issue as a matter of discovery, see where we are
12 with respect to setting up the claims constructions issues;
13 which you -- you'll -- you'll discern that I actually allow
14 discovery pretty much solely related to claims construction,
15 and then broader discovery on the back end once you know how
16 I actually have interpreted the elements of the claim.

17 That strikes me as probably a better point at which
18 to -- notwithstanding what -- what the Judge did in Delaware
19 or what I said here, I don't know that those issues have --
20 in either the motion to dismiss that you put before me or in
21 the motion to transfer are dispositively decided.

22 So, it strikes me that that may be a better way to
23 deal with the question. And it may be at that juncture, once
24 I have settled some of the issues in claims construction, to
25 see exactly where we are.

1 A stay may not make much sense then; consolidation
2 may make good sense then.

3 It may be that I can see my way through the issues
4 with respect to the liability of the ASIC defendants at that
5 juncture where it doesn't make sense now.

6 Let's brief up the motion for summary judgment.
7 Discovery has put into play what is really going to be at
8 issue from the Court's resolution of that motion.

9 You can look through to see potentially what the
10 liability of the ASIC defendants might be in the case, and it
11 will resolve based on some economy of scale, even though both
12 actions have proceeded parallel.

13 MR. MAVRAKAKIS: I have a question, Your Honor.

14 Just so I understand what -- what Your Honor's
15 saying how would proceed; are you saying that we would
16 proceed with limited discovery just to get up to the claim
17 construction?

18 THE COURT: I normally just allow discovery on
19 claims construction issues.

20 MR. MAVRAKAKIS: Because really, that's -- that's --
21 that's our hardship here because --

22 THE COURT: I know that. That's why I spoke to
23 that.

24 MR. MAVRAKAKIS: Right.

25 So, I mean, if -- if the ASIC defendants are not

1 going to have to participate in the broad overreaching
2 discovery that we don't believe is necessary --

3 THE COURT: Well, I don't know that. I don't know
4 that, because I'm -- my inclination is not to stay this
5 action, but it -- it is to have a view toward discovery that
6 focuses on claim construction.

7 You tell me that's a hardship.

8 Now, you know, I can't weigh -- until I actually get
9 in and see what you're talking about --

10 MR. MAVRAKAKIS: But --

11 THE COURT: -- I've gotten a view -- they want to
12 conduct some pretty broad-based discovery with respect to
13 choices that are made and mechanisms utilized.

14 MR. MAVRAKAKIS: Could I try and explain why I don't
15 think that's at all necessary in this action, Your Honor?

16 Again, and this -- this tells you why this case is
17 very different from the process cases they are relying on.

18 Here, we have source code that is used on a
19 computer -- on computers to perform the method.

20 So, yes, there are input -- obviously, inputs need
21 to be given to the process. But the process and the
22 capabilities of the software and whether it performs those
23 steps is set in stone in the source code.

24 THE COURT: Umm-hmm.

25 MR. MAVRAKAKIS: -- in other words, so, --

1 THE COURT: Which is confidential --

2 MR. MAVRAKAKIS: Right. Highly confidential. It's
3 the crown jewels of the company.

4 Synopsys is a software company. And its source code
5 is its most important asset.

6 Now -- so, if that source code -- if the process
7 that --

8 THE COURT: Is it triggered by the input? Does the
9 operation of the source code relative to the input --
10 ultimately relates in -- results in -- in what the Design
11 Compiler helps to design? That is, the ultimate, I suspect,
12 integrated circuit, whatever it does, is that triggered by
13 the input?

14 Is it affected by the input?

15 MR. MAVRAKAKIS: No. Synopsys's Design Compiler,
16 for instance, can accept four types of input. And if all
17 four types of those inputs cannot be considered, you know,
18 actions and conditions as recited by the claim, then the
19 defendants then -- then the ASIC defendants don't infringe.

20 And again --

21 THE COURT: As -- from -- from that point to the use
22 of -- I think you said by other foundries that have other
23 design input selections that can be utilized --

24 MR. MAVRAKAKIS: Well, that's the data from which
25 the -- the process draws from in order to make the design.

1 Now, if -- the data is not used --

2 THE COURT: But that's the -- the -- does the
3 discovery fight on the discovery motion -- isn't it -- isn't
4 that the fight in the discovery motion?

5 MR. MAVRAKAKIS: Well, the -- the particular
6 discovery on that motion, I'm not sure.

7 THE COURT: Well, ultimate --

8 MR. MAVRAKAKIS: Ultimately.

9 THE COURT: -- that's where the hardship will come
10 from.

11 MR. MAVRAKAKIS: Right. That's the hardship, in
12 having to do all this discovery, which really doesn't matter,
13 because in the end, source code -- Synopsys's source code
14 sets the process for how those foundry databases, in a sense,
15 are used.

16 THE COURT: And absent the provision of that
17 discovery, you wouldn't be making a motion for a stay, right?

18 MR. MAVRAKAKIS: You mean, the discovery on the
19 specifics of what the ASIC defendants do? Yes. The hardship
20 that I'm relying here -- on here is for -- the ASIC
21 defendants is the fact that they have to participate in a
22 case with broad discovery, and they don't add anything to it.

23 Synopsys and Ricoh can go through the local rules,
24 same counsel as ASIC defendants, and after claim construction
25 is done this, case will be ripe for summary judgment motions

1 on both the issues of infringement and validity.

2 And then, in the very small possibility that there
3 is some other act that defendants might make can be relevant,
4 that could be tried at that time.

5 That's a very small possibility.

6 And the reason for it, if I take you through -- you
7 know, if you go through the flow chart, could get there,
8 first you have to find the patent's valid. Then you have to
9 find that Design Compiler doesn't infringe or a reason for
10 which these additional steps can bring it into infringement.

11 Now, if you find Design Compiler's ordinary use
12 doesn't infringe because of some of the steps that they can't
13 change, then that's the end of the case.

14 Now, if you find that Design Compiler infringes in
15 its ordinary use, then Synopsys is going to have to make some
16 deal with Ricoh.

17 In any case, these defendants will be saved the
18 hardship of going through discovery.

19 Now, my colleague here says that, "Well, it doesn't
20 matter, if Synopsys is paying the bill."

21 But it does matter. These are small companies.

22 And we believe that's why they were sued.

23 These companies will be disrupted. They'll have to
24 produce documents. They'll have to respond to
25 interrogatories, which requires their time, you know, very --

1 of executives and their in-house counsel. They'll have to
2 provide -- you know --

3 THE COURT: I --

4 MR. MAVRAKAKIS: -- people for deposition.

5 THE COURT: Okay.

6 MR. BROTHERS: Your Honor --

7 THE COURT: Last point.

8 MR. BROTHERS: Okay.

9 THE COURT: I am going to rule.

10 MR. BROTHERS: We have to re-argue -- counsel has
11 just reargued the reasons why there should be a stay.

12 Your questions with respect to source code, though,
13 seem to me to focus on the infringement allegations here.
14 The source code is the parameters of what the Design Compiler
15 does.

16 The patent does not allege -- the '432 patent,
17 Ricoh's allegations, does not allege that the source code
18 standing alone fringes the '432 patent.

19 It requires the independent inputs.

20 Now, the -- the argument that how this case --

21 THE COURT: And he argues that the independent
22 inputs are, in some respects, a function of the relationship
23 to the source code itself; and there may be some other
24 independent selections that could be found to be
25 non-infringing and some that may be found to be infringing.

1 But the resolution of those issues in the
2 Synopsys/Ricoh case will take us a great way toward
3 discerning whether or not there needs to be some independent
4 litigation on ones that have not been construed and
5 determined as a matter of Rule 56 in Synopsys/Ricoh action.

6 MR. BROTHERS: As defendants have conceded -- this
7 is on, I think, page 7 of their reply brief, there will be a
8 trial on infringement -- with -- in this action if the stay
9 is granted.

10 What these defendants are trying to do is turn the
11 process on its head and say, "Well, let's just have -- a
12 trial on the affirmative defense of invalidity first, and
13 then this general issue as to -- there is just possible
14 infringing use of Design Compiler, when, as we've already
15 discussed, there may be; there may not be."

16 I would reference Your Honor to American Academy of
17 Sciences versus Novell, case of out of this district in 1992;
18 similar case; a software in which input was being provided by
19 the banks. And it was consented that that input constituted
20 infringement, and Novell, the maker of the software, said,
21 "No, you ought to stay that part of the case and transfer it
22 over to Utah where there's declaratory action judgment
23 proceeding."

24 And the Court said, "No. It should stay here,
25 because the direct infringement claims are against Bank of

1 America and the other banks" -- banks that were at issue.

2 Here, we have both cases consolidated in the same
3 court, and it seems to me --

4 THE COURT: Yeah. Both cases existing in the same
5 court.

6 MR. BROTHERS: Sure. Sure.

7 THE COURT: You haven't --

8 MR. BROTHERS: I'm sorry.

9 -- both cases existing in the same court. You have
10 our motion for consolidation.

11 Your Honor --

12 THE COURT: Well --

13 MR. BROTHERS: -- made a couple of references -- if
14 I can just ask for clarification.

15 When Your Honor was saying you were inclined to deny
16 the stay motion to streamline discovery, there is currently
17 scheduled, I think, the case management conference for
18 February 10th. We have asked to move that up. Counsel
19 has informed us that they are available the first two weeks
20 of January. We'd like to get going and get that streamlined
21 and established. We have motions scheduled already for -- I
22 believe, it's January 6th.

23 THE COURT: What is this -- I'll give you five more
24 minutes.

25 What is this motion for summary judgment that you

1 filed? What --

2 MR. MAVRAKAKIS: I can -- I can address that, Your
3 Honor.

4 And this -- just points out that -- you know, we
5 have six separate entities here.

6 There are two Matrox entities that only -- and --
7 and we would have filed a motion to dismiss as a matter of
8 law, but a recent case came out -- case came out from the
9 Federal Circuit which says information is not a product, and
10 a process has to be -- a process has to be one of
11 manufacture.

12 And this patent is clearly not either of those. And
13 these two Matrox defendants use Design Compiler in Canada.

14 So, as a matter of law, there is -- you know, they
15 don't want to be in this case anymore. And they join in the
16 motion to stay. If it doesn't -- if it is granted, or if it
17 gets granted. They just don't see any reason there needs to
18 be a patent infringement litigation pending against them,
19 since the law, as the Federal Circuit has made clear, said
20 they shouldn't be in it.

21 MR. BROTHERS: On the motion for summary judgment,
22 it was accompanied by a declaration from one of the corporate
23 representatives of these two Canadian companies that was on
24 the very issues that we had sought discovery on and have
25 received none.

1 It is a very fact-intensive question as to what it
2 is they do, where it is they do it. There's an entity that
3 they have in the United States --

4 THE COURT: So, you are seeking a Rule 56 (f)
5 continuance to get that discovery?

6 MR. BROTHERS: We have not yet, but we will if -- if
7 required. We will file a Rule 56.

8 THE COURT: Well, I am going to tell you -- don't
9 bring me a Rule 56 motion that has request for discovery
10 where the discovery would be relevant to the issue you want
11 me to stay as a matter of law. I am not hearing it. So, you
12 better get together on that.

13 MR. BROTHERS: I --

14 MR. MAVRAKAKIS: I think, Your Honor, that really
15 there was a declaration just to give the Court the context --

16 THE COURT: Well, I don't want to argue the motion.
17 I want to know -- so early in the life of the case, I
18 wondered what it was about.

19 MR. MAVRAKAKIS: It's because -- it's because the
20 patent -- the patent is dealing with a process that -- where
21 you get information. There's no dispute about that. You get
22 a plan on how to make a chip --

23 THE COURT: Right.

24 MR. MAVRAKAKIS: That's not a process for making the
25 chip. And under the Halsey (phonetic) case in the Fed

1 Circuit as a matter of law they don't have any case against
2 these defendants because they practice Design Compiler in
3 Canada. I mean, you know -- so, they want to take the
4 deposition of the guy to ask him if it's true in his
5 declaration that all the processes are performed in Canada.
6 I mean --

7 THE COURT: I don't know. I mean --

8 MR. MAVRAKAKIS: Yeah.

9 THE COURT: That's why judges don't get ahead of the
10 lawyers on questions like that.

11 MR. MAVRAKAKIS: But there's no need for --

12 THE COURT: Gives you a reasonable amount of
13 discovery in the case so that no one walks in here and says,
14 "You know, Judge, there is this dangling participle out
15 there. If we got the discovery, it would be relevant to the
16 question you have."

17 MR. MAVRAKAKIS: We could show that that 56 (f)
18 motion does not rise to the requirements in the Ninth
19 Circuit.

20 MR. BROTHERS: Your Honor, we'll confer and see --

21 THE COURT: Meet and confer on it before, and send
22 me a letter that -- by the -- what's the third Friday in
23 December?

24 MR. BROTHERS: Well, our Rule 56 (f) response would
25 be due next Tuesday, I believe.

1 THE COURT: Well, send me a letter that -- you need
2 to meet and confer before then.

3 If the motion is going to go forward, just is send
4 me a letter that you met and conferred on it and why it is
5 you believe that that motion needs to go forward.

6 And I'll evaluate it and tell you whether or not the
7 motion is going to go forward. And I will also look to see
8 if I can get you in earlier than January.

9 And, you know, I've told you what my inclination is,
10 but I'll take a look at that. I haven't read through the
11 patent as well myself. Let me take a look at the patent
12 itself, too, before I ultimately resolve the question on the
13 stay motion.

14 I would not be inclined to consolidate at this time
15 for the very same reasons I articulated. I don't know enough
16 about the case to make that determination at this juncture.
17 I will decide the stay issue.

18 MR. BROTHERS: Would it be appropriate to defer the
19 resolution of the pending summary judgment motion of these
20 two defendants until Your Honor decides whether or not if the
21 case is --

22 THE COURT: No. I want you -- because it's not
23 going to change -- it's not going to change the issue that
24 you dispute.

25 I want you to get on that and resolve that.

1 MR. BROTHERS: Thank you, Your Honor.

2 THE COURT: All right. Matter submitted.

3 MR. MAVRAKAKIS: Thank you.

4 THE COURT: Okay. Thank you.

5 (The proceedings were concluded at 10:55 a.m.)

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1 R E P O R T E R ' S C E R T I F I C A T E

2

3 I, JEANNE BISHOP, the undersigned, duly authorized
4 to report and transcribe proceedings in the United States
5 District Court pursuant to Title 28, Section 753 of the
6 Federal Civil Judicial Procedure and Rules do hereby certify:

7 That I am a Certified Shorthand Reporter in the
8 State of California, Certificate No. 2421;

9 That I attended the proceedings at the time and
10 place stated herein;

11 That pursuant to my duties as such, said proceedings
12 were reported by me and transcribed with computer-aided
13 translation into typewriting;

14 That the foregoing transcript, Pages 1-36, is a
15 full, complete, and true record of said proceedings.

16 Date: December 23, 2003

JEANNE BISHOP
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8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 RICOH COMPANY, LTD.,

13 Plaintiffs,

14 v.

15 AEROFLEX INCORPORATED, AMI
SEMICONDUCTOR, INC., MATROX
16 ELECTRONIC SYSTEMS, LTD., MATROX
GRAPHICS, INC., MATROX
17 INTERNATIONAL CORP., and MATROX
TECH, INC.,

18 Defendants.
19

) Case No. CV 03-04669 MJJ(EMC)

) **MANUAL FILING NOTIFICATION**

) **RE EXHIBIT E TO DECLARATION OF**
) **ERIK K. MOLLER IN SUPPORT OF**
) **DEFENDANTS' OPPOSITION TO MOTION**
) **FOR LEAVE TO FILE AMENDED**
) **COMPLAINT**

MANUAL FILING NOTIFICATION

Regarding: *Exhibit E to Declaration of Erik K. Moller in Support of Defendants' Opposition to Motion for Leave to File Amended Complaint*

This filing is in paper or physical form only, and is being maintained in the case file in the Clerk's office.

If you are a participant in this case, this filing will be served in hard-copy shortly.

For information on retrieving this filing directly from the court, please see the court's main web site at <http://www.cand.uscourts.gov> under Frequently Asked Questions (FAQ).

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☒ Item Under Seal

☐ Conformance with the Judicial Conference Privacy Policy (General Order 53).

☐ Other (description): _____

Dated: March 9, 2004

Respectfully submitted,

HOWREY SIMON ARNOLD & WHITE, LLP

By: /s/ Erik K. Moller

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August 27, 2003

VIA FACSIMILE AND U.S. MAIL

Edward A. Meilman
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Re: *Ricoh Company, Ltd. v. Aeroflex Incorporated, et al.*
Civil Action No. 03-103-GMS

Dear Ed:

I have your letter to Erik Moller of August 26. Your proposal appears similar to what the defendants agreed to do in a letter I sent you on the 26th, so I believe there is a possible compromise in sight.

Your letter proposes redefining "ASIC Product" to include only those ASICs on which logic synthesis operations were performed. This is a good first step to focusing your request on materials that are relevant to this case. The other necessary restriction is that the design materials requested must be relevant to the operations that Ricoh is accusing, as identified in your response to defendants' interrogatory number 1. These are: "input to Design Compiler of flowcharts or hardware description languages that describe behavioral aspects of an ASIC under design," and use of Design Compiler "to synthesize the hardware cells to be implemented in the desired ASIC." Documentation relating to other aspects of the design is irrelevant to this case. As I noted in my letter of yesterday, defendants have independently undertaken to produce engineering materials relevant to Ricoh's allegations of infringement, as outlined in its interrogatory answer.

With regard to the Matrox defendants, materials relating to design work done in Canada cannot be relevant to this litigation, regardless of whether any kind of logic synthesis was done or not. The recent Federal Circuit decision in Bayer v. Housey Pharmaceuticals, confirms what was already evident from the statute: that 35 U.S.C. 271(g) applies only where a patented process is used directly in the manufacture of a product that is later imported in the United States. Ricoh does not need extensive design documentation in order to determine the veracity of the Matrox defendants' contention that, but for the Florida facilities of Matrix Tech that were closed in 2002, Matrox performs no ASIC design work in the United States. We are in the process of obtaining and producing documents sufficient to show the location of its engineering facilities and employees. If Ricoh wishes, the Matrox defendants can then make person(s) with knowledge of the nature and location of Matrox' design work available for deposition.



Edward A. Meilman
August 27, 2003
Page 2

With regard to your interrogatory 7, most of the denials in the answers and many of the facts identified in the counterclaims relate to non-infringement of the Kobayashi patent and its invalidity. These are matters which have been investigated by counsel working for defendants and not facts that were known independently of this litigation. Prior to filing of this litigation none of the defendants was aware of the Kobayashi patent. Defendants will identify experts and offer expert testimony on these issues in accordance with the schedule adopted by the Court. To the extent that there are other specific factual issues within the possession of persons known to defendants, defendants will revise their interrogatory answers to identify such persons.

Very truly yours,

Christopher Kelley /gg

Christopher L. Kelley

CLK:gg



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FACSIMILE COVER SHEET

DATE: August 27, 2003

TO: **NAME:** Edward A. Meilman, Esq.

COMPANY: Dickstein Shapiro Morin & Oshinsky LLP

FAX NUMBER: (212) 997-9880 **PHONE NUMBER:** (212) 835-1400

CITY: New York

FROM: **NAME:** Christopher L. Kelley, Esq.

DIRECT DIAL NUMBER: (650) 463-8113 **USER ID:** 5172

NUMBER OF PAGES, INCLUDING COVER: 3 **CHARGE NUMBER:** 06816.0060.000000

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SUPPLEMENTAL MESSAGE:

Re: Ricoh Company, Ltd. v. Aeroflex Incorporated, et al.

PLEASE SEE CORRESPONDENCE DATED AUGUST 27, 2003

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September 12, 2003

BY FACSIMILE AND U.S. MAIL
(650) 493-8400

Christopher L. Kelley, Esq.
Howrey Simon Arnold & White, LLP
301 Ravenswood Avenue
Menlo Park, CA 94025

Re: *Ricoh Company, Ltd., v. Aeroflex Incorporated, et al.*
Del. Civil Action No. 03-103-GMS
Our Ref.: R2180.0171

Dear Mr. Kelley:

The assertion in your letter of September 11, 2003 that Judge Sleet viewed your position as the appropriate basis for compromise is wrong. During the conference with the Court, you stated your position and we stated ours, namely that what we were looking for was information relating to the process of manufacturing ASICs using systems that have logic synthesis in them (Tr. at 60). Judge Sleet then asked "are we at a point in this discussion as to items 5 and 7 where counsel can be released to your own devices and work it out?", to which both sides said yes (Tr. at 61). Since the Judge had ordered that the matter be resolved by September 5, 2003 (*Id.*), I reiterated our position by letter on August 28, 2003 and asked you to set forth any further proposal for limitation within the time limit set by Judge Sleet. At no time has Ricoh withdraw from any position it took at the hearing.

Since you did not reply to my August 28, 2003 letter within the time set by the Court, you have waived any such further limitation on the scope of discovery. Nevertheless, my letter of September 10, 2003 further refines the scope of the discovery to which we are entitled, even though you were not entitled to such refinement. Proper responses to Interrogatories and production of documents are required now.

We disagree with your position about the applicability of 271(g). Beyond that disagreement, you are also wrong when you assert that my "statement that we [Howrey] have 'asserted there are subsequent processes that materially change the product' is false". I call your attention to the letter from your firm of August 21, 2003. The last sentence on the second page reads

"Substantial subsequent processes are necessary that materially change the computer code netlist into the ASIC chip that the Matrox defendants eventually sell in the United States."

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Christopher L. Kelly, Esq.
September 12, 2003
Page 2

Knowledge Edge, Inc. further objects to the noticed deposition date of October 16, 2003 and the place of deposition in that the only person who is most qualified, knowledgeable and competent to testify as to the matters set forth in Attachment B, is Dr. Kobayashi, who, as you know well, does not reside in the United States.

Very truly yours,



Edward A. Meilman

EAM/bf

cc: Gary Hoffman, Esq.
Kenneth Brothers, Esq.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RICOH COMPANY, LTD,

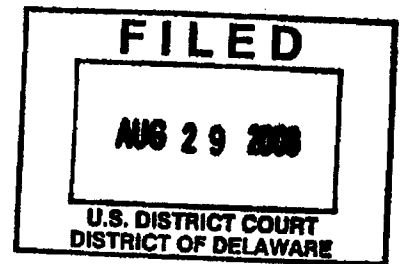
Plaintiff,

v.

AEROFLEX INCORPORATED, AMI
SEMICONDUCTOR, INC., MATROX
ELECTRONIC SYSTEMS, LTD.,
MATROX GRAPHICS, INC., MATROX
INTERNATIONAL CORP., and MATROX
TECH, INC.,

Defendants.

Civil Action No. 03-103 GMS



MEMORANDUM AND ORDER

I. INTRODUCTION

On January 21, 2003, the plaintiff, Ricoh Company, Ltd. ("Rico") filed the above-captioned patent infringement action against the above-named defendants. In its complaint, Ricoh alleges that each of the defendants infringes its U.S. Patent No. 4,992,432 ("the '432" patent") by "using, offering to sell, and/or by selling and/or importing into the United States application specific integrated circuits designed by or using information generated by, the process" described in the '432 patent.

Presently before the court is the defendants' motion to stay this action, or, in the alternative, to transfer this action to the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1404. For the following reasons, the court will grant the defendants' motion to transfer.

II. BACKGROUND

This case is a patent infringement action involving technology related to the design of

application-specific integrated circuits ("ASICS"). ASICS are microelectronic devices that electronics manufacturers design for a specific function, for example, for use in graphics and telecommunications devices.

The defendant Aeroflex Incorporated ("Aeroflex") is a high technology company that designs, develops, manufactures, and markets a diverse range of microelectronics. Its principle place of business is in Plain View, New York. AMI Semiconductor, Inc. ("AMI") is a high technology company that designs, develops, and manufactures a broad range of integrated circuit products for a number of end-uses. Its principle place of business is in Idaho. The Matrox defendants are high technology companies that design software and hardware solutions in the fields of graphics, video editing, image processing, and new business media. The Matrox defendants' principle places of business are in Canada, New York, and Florida.

Ricoh is a high technology corporation that manufactures digital office equipment. Its principle place of business is in Japan. While the record does not reflect that Ricoh has any facilities in Delaware, it has six subsidiaries in California, including three within the Northern District of California.

Third-party Synopsys, Inc. ("Synopsys") is a designer and manufacturer of high-level design automation solutions for the design of integrated circuits and electronic systems. Synopsys sells its products, including the Design Compiler at issue in the present case, to semiconductor, computer, communications, consumer electronics, and aerospace companies, including each of the defendants. Its principle place of business is in California.

On July 9, 2002, Synopsys filed a declaratory judgment action against Ricoh in the Northern District of California. Through that action, Synopsys seeks a declaration of non-infringement and

invalidity of the '432 patent.

III. DISCUSSION

Section 1404(a) provides that “[f]or convenience of [the] parties and witnesses, in the interest of justice,” the court may transfer a civil action “to any other district . . . where it might have been brought.” 28 U.S.C. § 1404(a). It is the movants’ burden to establish the need for transfer, and ‘the plaintiff’s choice of venue [will] not be lightly disturbed.’ *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995) (citations omitted).

When considering a motion to transfer, the court must determine ‘whether on balance the litigation would more conveniently proceed and the interest of justice be better served by transfer to a different forum.’ *Id.* This inquiry requires “a multi-factor balancing test” embracing not only the statutory criteria of convenience of the parties and the witnesses and the interests of justice, but all relevant factors, including certain private and public interests. *Id.* at 875, 879. These private interests include the plaintiff’s choice of forum; the defendants’ preference; whether the claim arose elsewhere; and the location of books and record, to the extent that they could not be produced in the alternative forum.¹ *Id.* at 879. Among the relevant public interests are: “[t]he enforceability of the judgment; practical considerations that could make the trial easy, expeditious, or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; [and] the public policies of the fora.” *Id.* at 879-80 (citations omitted).

¹ The first three of these private interest collapse into other portions of the *Jumara* analysis. The court, therefore, will consider them in the context of the entire inquiry only. See *Affymetrix, Inc. v. Synteni, Inc. and Incite Pharmaceuticals, Inc.*, 28 F. Supp. 2d 192 (D. Del. 1998).

In the present case, Ricoh disputes that this action could have been brought in the Northern District of California due to a lack of personal jurisdiction over the defendants. While it is not this court's province to determine another court's jurisdiction, and it therefore expresses no opinion on this subject, the court will, however, note the following. The defendants assert that they have each registered to do business with the California Secretary of State or have solicited and made allegedly infringing sales in California. Additionally, as the defendants themselves have stated that litigating this action in California would be more convenient and preferable to them, it does not appear that a California court's exercise of personal jurisdiction over them would offend the minimum requirements inherent in the concept of fair play and substantial justice.

Ricoh next contends that it would be improper to transfer this action to California because the Delaware action is first-filed. While the court does not dispute that this action is first-filed, it concludes that an exception to this rule controls the present inquiry. Under Federal Circuit precedence, a manufacturer's declaratory judgment suit should be given preference over a patentee's suit against the manufacturer's customers when those customers are being sued for their ordinary use of the manufacturer's products. *See Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1464 (Fed. Cir. 1990). This rule, known as the "customer suit exception," recognizes that it is more efficient for the dispute to be settled directly between the parties in interest. *See Whelan Tech., Inc. v. Mill Specialities, Inc.*, 741 F. Supp. 715, 716 (N.D. Ill. 1990) (noting that the manufacturer is presumed to have a greater interest in defending its actions against charges of patent infringement.) It also acknowledges that a patentee's election to sue customers, rather than the manufacturer itself, is often based on a desire to intimidate smaller businesses. *See Kahn v. General Motors, Corp.*, 889 F.2d 1078, 1081 (Fed. Cir. 1989).

In the present case, the court concludes that Ricoh's infringement claims against the defendants are fundamentally claims against the ordinary use of Synopsys' Design Compiler. Thus, the California court's determination regarding infringement and validity of the '432 patent will efficiently dispose of the infringement issues regarding Synopsys' customers in this case. It is clear that, based on the outcome of the California case, either Synopsys will prevail and use of the Design Compiler will be determined to be non-infringing, or Ricoh will prevail, and Synopsys will be forced to pay damages or license the patent. In the latter situation, Synopsys' customers would then be immunized from liability. See *Intel Corp. v. ULSI Sys. Tech., Inc.*, 995 F.2d 1566, 1568 (Fed. Cir. 1993). For these reasons, the court finds that the first-filed rule does not control the present inquiry.

Upon consideration of the remaining Section 1404 transfer factors, the court concludes that the balance of convenience tips heavily in favor of transfer. In reaching this conclusion, the court relied on the following considerations, among others: (1) no party maintains any facilities, personnel, or documents in Delaware; (2) no acts of alleged infringement have taken place in Delaware; (3) no relevant third-party witnesses, including Synopsys, reside in Delaware;² (4) both the present case and the case in the Northern District of California are in the relatively early stages of litigation; (5) the relevant industry, the electronic design automation industry, is located in the Northern District of California; and (6) any disparity in court congestion, to the extent there is any, is not so great as to weigh against transfer due to the action currently pending in the Northern District. Thus, the court finds that the public and private interests are sufficient to tip the balance

²Although Ricoh predicts that Synopsys will cooperate with whatever discovery of it is required in the present action, even though it is not a party, the court finds such an assertion suspect at best.

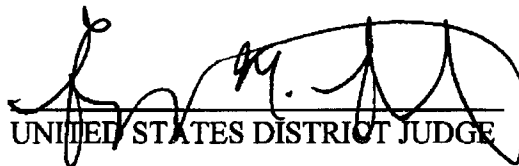
of convenience strongly in favor of transfer.³

IV. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. The Defendants' Motion to Transfer (D.I. 67) is GRANTED.
2. Ricoh's Request for Leave to File a Sur-Reply (D.I. 122) is DENIED.
3. The above-captioned case is hereby TRANSFERRED to the United States District Court for the Northern District of California.

Dated: August 29, 2003



UNITED STATES DISTRICT JUDGE

³As a result of the court's decision to transfer this case, it will not decide the Section 271(g) discovery dispute presently pending before it.